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RECORDS, INC., BRUNSWICK RECORD  
CORPORATION and MALACO, INC.

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ABS ENTERTAINMENT, INC., an  
Arkansas corporation, BARNABY  
RECORDS, INC., a California  
corporation, BRUNSWICK RECORD  
CORPORATION, a New York  
corporation and MALACO, INC., a  
Mississippi corporation, each  
individually and on behalf of all others  
similarly situated.

Plaintiffs,

v.

Case No. 15-cv-06257 PA (AGRx)

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

- 1. VIOLATION OF CALIFORNIA  
CIVIL CODE § 980(a)(2);**
- 2. MISAPPROPRIATION;**
- 3. VIOLATION OF CALIFORNIA  
BUSINESS AND PROFESSIONS  
CODE § 17200; and**
- 4. CONVERSION.**

**DEMAND FOR JURY TRIAL**

1 CBS CORPORATION, a Delaware  
2 corporation; CBS RADIO INC., a  
3 Delaware corporation; and DOES 1  
through 10,

4 Defendants.

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1 Plaintiffs ABS Entertainment, Inc. ("ABS"), Barnaby Records, Inc.  
 2 ("Barnaby"), Brunswick Record Corporation ("Brunswick") and Malaco, Inc.  
 3 ("Malaco") (ABS, Barnaby, Brunswick and Malaco are sometimes collectively  
 4 referred to as "Plaintiffs"), individually and on behalf of all other similarly situated  
 5 owners of sound recordings, hereby complain and allege as follows:

### 6 **PRELIMINARY STATEMENT**

7 1. This is a class action on behalf of owners of sound recording to obtain  
 8 injunctive relief and monetary damages sustained by Plaintiffs and the Class because  
 9 the Defendants, through their actions to deliver music content through broadcast radio  
 10 channels, HD radio channels, the Internet and mobile devices without consent of or  
 11 licenses from the Plaintiffs and the Class. As a result of their pernicious, improper and  
 12 illegal conduct, Defendants have reaped hundreds of millions of dollars that rightfully  
 13 belong to Plaintiffs and the Class.

14 2. Defendant CBS Corporation (through itself and its subsidiaries, including  
 15 CBS Radio Inc.) (collectively, "CBS") is one of the leading operators in the United  
 16 States of media and entertainment services via broadcast and digital delivery.  
 17 Specifically, CBS delivers music content through broadcast (AM and FM) radio  
 18 channels, HD radio channels, the Internet and its stations' websites, and through one or  
 19 more CBS mobile applications on smart phones, tablets and consoles. According to  
 20 CBS, as of February 10, 2015, it owned 117 domestic radio stations, servicing 26 U.S.  
 21 media markets, including 77% of the top 25 markets. (Delivery by CBS of musical  
 22 content through AM and FM radio stations shall hereafter be described as the  
 23 "Broadcast Service"). Many of its stations in the Broadcast Service are the most  
 24 popular music stations in the applicable market, including in Los Angeles, where CBS  
 25 owns and operates KROQ – 106.7 FM, KAMP – 97.1 FM, KCBS – 93.1 FM, KRTH –  
 26 101.1 FM and KTWV – 94.7 FM.

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1           3. CBS also streams to listeners the digital simulcast of the sound recordings  
2 being performed on its radio stations through the Internet and mobile application.  
3 (Delivery by CBS of musical content through the Internet shall hereafter be described  
4 as the "Internet Service"). The Broadcast Service and the Internet Service are  
5 sometimes referred to collectively as the "Music Service."

6           4. CBS has not obtained performance rights licenses or paid public  
7 performance royalties to copyright owners of sound recordings of musical  
8 performances that initially were fixed (*i.e.*, recorded) prior to February 15, 1972 ("Pre-  
9 1972 Recordings"). Sound recordings initially fixed on or after February 15, 1972 are  
10 subject to federal copyright protection under the United States Copyright Act and are  
11 not the subject of this lawsuit.

12           5. Pre-1972 recordings comprise the historical backbone of the music  
13 industry. From Tin Pan Alley to the Big Band era to the Summer of Love, those  
14 recordings have defined generations and include the recordings of legendary artists  
15 such as Al Green, Elvis Presley, Jackie Wilson, King Floyd, The Everly Brothers and  
16 The Beatles.

17           6. CBS understands the value of Pre-1972 Recordings to its Music Service  
18 but has ignored the obligation to obtain licenses to exploit those recordings. Instead,  
19 CBS has chosen to copy tens of thousands of Pre-1972 Recordings to its servers and to  
20 transmit, copy, perform, broadcast and stream them to its millions of users on a daily  
21 basis without any authorization. By selling advertisements and through other means,  
22 CBS profits handsomely from its exploitation of Pre-1972 Recordings.

23           7. Because CBS has chosen to operate the Music Service without licenses for  
24 Pre-1972 Recordings, CBS is now liable under California law for violation of  
25 California Civil Code § 980(a)(2), misappropriation, violation of California Business  
26 & Professions Code § 17200, and conversion for its unauthorized reproduction,  
27 distribution, and public performance of those recordings.  
28

**THE PARTIES**

8. ABS is a corporation duly organized and existing under the laws of Arkansas, with its principal place of business in West Memphis, Arkansas.

9. Barnaby is a corporation duly organized and existing under the laws of California, with its principal place of business in Beverly Hills, California.

10. Brunswick is a corporation duly organized and existing under the laws of New York, with its principal place of business in Islamorada, Florida.

11. Malaco is a corporation duly organized and existing under the laws of Mississippi, with its principal place of business in Jackson, Mississippi.

12. Through a series of transactions, ABS acquired the exclusive ownership in the sound recordings of Al Green, Willie Mitchell, Ann Peebles, Syl Johnson, Otis Clay, Bill Black Combo, and O.V Wright, a representative sample of the titles of which are specified on the attached Schedule "A1" and incorporated herein by reference (the "ABS Recordings"). ABS is the successor-in-interest to Cream Records and Hi Records, and still markets and promotes certain of the ABS Recordings under those names.

13. Through a series of transactions, Barnaby acquired the exclusive ownership in certain sound recordings of Andy Williams, Bill Hayes, the Crickets, Eddie Hodges, Jimmy Buffett, Johnny Tillotson, Julius LaRosa, Lenny Welch, Link Wray and His Ray Men, Marion Marlowe, Ray Stevens, The Chordettes, The Everly Brothers and other artists, a representative sample of the titles of which are specified on the attached Schedule "A2" and incorporated herein by reference (the "Barnaby Recordings"). Barnaby is the successor-in-interest to Cadence Records, and still markets and promotes certain of the Barnaby Recordings under that name.

14. Through a series of transactions, Brunswick acquired the exclusive ownership in the sound recordings of Barbara Acklin, Gene Chandler, Jackie Wilson, The Artistes, The Chi-Lites, The Young-Holt Unlimited, Tyrone Davis and other

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1 artists, a representative sample of the titles of which are specified on the attached  
2 Schedule "A3" and incorporated herein by reference (the "Brunswick Recordings").

3 15. Through a series of transactions, Malaco acquired the exclusive ownership  
4 in the sound recordings of King Floyd, Stefan Anderson, Mighty Sam, Mahalia  
5 Jackson, The Cellos, Eddie Bo, The Delroys, The Davis Sisters, The Ward Singers,  
6 The Roberta Martin Singers, Rev. James Cleveland and other artists, a representative  
7 sample of the titles of which are specified on the attached Schedule "A4" and  
8 incorporated herein by reference (the "Malaco Recordings"). Malaco is the successor-  
9 in-interest to Bess Music Company, Kenwood Records, Apollo Records and Savoy  
10 Records (Gospel), and still markets and promotes certain of the Malaco Recordings  
11 under those names.

12 16. The ABS Recordings, Barnaby Recordings, Brunswick Recordings and  
13 Malaco Recordings are sometimes individually and collectively referred to as the  
14 "Recordings."

15 17. Plaintiffs have been and continue to be engaged in the business of  
16 distributing, selling, and/or licensing the reproduction, distribution, sale, and  
17 performance of the Recordings including in records, audiovisual works, and for  
18 streaming (*i.e.*, performing) and downloading over the Internet.

19 18. CBS Corporation is a corporation duly organized and existing under the  
20 laws of Delaware, with its principal place of business in New York, New York. CBS  
21 Corporation is the parent company of CBS Radio Inc., and owns and operates the  
22 Music Service, which broadcasts music to its listeners and delivers high quality  
23 streams of music to its users.

24 19. CBS Radio Inc. is a corporation duly organized and existing under the laws  
25 of Delaware, with its principal place of business in New York, New York. CBS Radio  
26 Inc. is a wholly owned subsidiary of Defendant CBS Corporation.  
27  
28



20. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as Does 1 through 10, inclusive, are unknown to Plaintiffs who therefore sue said Defendants by such fictitious names. Plaintiffs will amend this First Amended Complaint to allege their true names and capacities when such have been ascertained. Upon information and belief, each of the Doe Defendants is responsible in some manner for the occurrences herein alleged, and Plaintiffs' injuries as herein alleged were proximately caused by such Defendants' acts or omissions.

21. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned in this First Amended Complaint, CBS and each of the Doe Defendants was the agent of each other and, in doing the things alleged in this First Amended Complaint, was acting within the course and scope of such agency.

### **JURISDICTION AND VENUE**

22. Jurisdiction exists pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy exceeds the sum or value of \$5 million (exclusive of interest and costs), it is a class action in which a member of a Class (defined in paragraph 35 below) is a citizen of a State different from CBS, and the number of members of the proposed Class exceeds 100.

23. This Court has personal jurisdiction over CBS because: (a) CBS is engaged in a continuing course of tortious conduct in California by publicly performing, reproducing, and distributing Pre-1972 Recordings within the State of California including, without limitation, through its broadcasting on its 58 owned and operated radio stations in California; and (b) CBS's conduct causes injury to Plaintiffs and the Class and their intellectual property in California.

24. Venue in this District exists pursuant to 28 U.S.C. § 1391(b) and (c) because CBS is subject to personal jurisdiction in this District and because a substantial part of the events or omissions giving rise to the claims occurred in this

1 District. Specifically, CBS owns and operates at least 10 radio stations in the Central  
 2 District of California that broadcast music to California residents and digitally  
 3 simulcasts the transmissions of at least 50 radio stations from the Central District of  
 4 California.

5 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

6 25. Plaintiffs commercially distribute and otherwise exploit the Recordings,  
 7 either directly or through a licensee.

8 26. Plaintiffs originally “mastered” the Recordings in the analog format. To  
 9 “master” means to take the final mixed sound recording, possibly equalizing the  
 10 sounds and designate it as the definitive copy to be duplicated for the end user. With  
 11 the advent of the digital age, some or all of the Recordings have been “remastered” by  
 12 mechanically taking the final mix of the sound recording in its analog format and  
 13 transferring it into a digital format without remixing, resequencing or adding additional  
 14 sounds. A remastered recording and the originally mastered recording are identical in  
 15 the sense that the actual sounds of the artist’s performances fixed in the originally  
 16 mastered recording are the same as the actual sounds of the artist’s performances fixed  
 17 in the remastered recording. Plaintiffs own all right, title and interest in the  
 18 Recordings, including without limitation, the Recordings to the extent that they have  
 19 been remastered at any time into any format.

20 27. For some Recordings, Plaintiffs have granted licenses allowing for the  
 21 inclusion of a Recording on a “compilation album” with other recordings, and further  
 22 allowing for the distribution of the “compilation album” containing the Recording. For  
 23 any such “compilation album,” Plaintiffs retain all right, title and interest in the  
 24 ownership of the Recording on the compilation album, regardless of whether the  
 25 compilation album uses the originally “mastered” Recording or a “remastered”  
 26 Recording in any format or on any medium.

27 28. Plaintiffs’ ownership of their Recordings, including their originally  
 28



1 mastered Recordings, any remastered Recordings, and any Recordings that may be  
 2 embodied on a “compilation album” (in any format) includes the right to publicly  
 3 perform the Recordings and the right to exclusively license the public performance of  
 4 the Recordings, including without limitation public performances originating from the  
 5 master Recording, any remastered Recording, and as embodied on any compilation  
 6 album.

7 29. CBS provides the Broadcast Service to members of the public in California  
 8 and elsewhere, and broadcasts sound recordings through numerous radio stations  
 9 throughout California, including, without limitation, the following:

- 10 (a) Los Angeles: (i) KROQ – 106.7 FM; (ii) KAMP – 97.1 FM; (iii)  
 11 KCBS – 93.1 FM; (iv) KRTH – 101.1 FM; and (v) KTWV – 94.7 FM;
- 12 (b) Palm Springs: KEZN – 103.1 FM;
- 13 (c) Riverside: (i) KFRG – 95.1 FM; (ii) KVFG – 103.1 FM; and (iii)  
 14 KXFG – 92.9 FM;
- 15 (d) Sacramento: (i) KNCI – 105.1 FM; (ii) KSFM – 102.5 FM; (iii)  
 16 KYMX – 96.1 FM; and (iv) KZZO – 100.5 FM;
- 17 (e) San Diego: (i) KEGY – 103.7 FM; and (ii) KYXY – 96.5 FM; and
- 18 (f) San Francisco: (i) KITS – 105.3 FM; (ii) KLLC – 97.3 FM; and (iii)  
 19 KMOV – 99.7 FM.

20 Among the sound recordings that CBS publicly performs, reproduces and distributes  
 21 through the Broadcast Service are the Recordings.

22 30. The Internet Service is provided by CBS to members of the public in  
 23 California and elsewhere, and delivers and streams (and licenses others to deliver and  
 24 stream) music through its station’s websites, and through smart phones and tablets  
 25 through its downloadable Android and iOS Apps. Among the sound recordings that  
 26 CBS publicly performs, reproduces, and distributes through the Internet Service are the  
 27 Recordings.  
 28

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31. CBS understands that having a vast and complete range and array of music is critical to the success of any music service, which is why Pre-1972 Recordings constitute a significant part of the Music Service. Through the Internet Service, CBS offers and advertises live radio simulcast, which allows a user to select and listen to the live audio simulcast of hundreds of radio stations throughout the United States, inclusive of radio stations owned by CBS. Many of these radio stations are dedicated to Pre-1972 Recordings. CBS promotes these stations in order to establish and increase its user base, popularity, and revenue.

32. Plaintiffs are informed and believe, and on that basis allege, that in order to populate the Music Service's databases and in order to broadcast and stream musical recordings to the public, CBS has reproduced and copied and continues to reproduce and copy Pre-1972 Recordings to one or more servers and storage devices, and uses technology or systems that results in one or more copies of Pre-1972 Recordings being distributed to its users' computers or storage devices.

33. CBS does not, and knows that it does not, have any license, right or authority to reproduce, perform, distribute or otherwise exploit *via* the Music Service any Pre-1972 Recordings (including the Recordings). CBS also knows which of the recordings it reproduces, performs, distributes or otherwise exploits *via* the Music Service are Pre-1972 Recordings.

34. CBS's entire business is built around selling access to music and selling the music. CBS delivers audio advertisements to its users in between songs and displays (through the Internet Service, including mobile apps) visual ads while music is playing.

### **CLASS ACTION ALLEGATIONS**

35. Plaintiffs bring this action, pursuant to Fed. R. Civ. P. 23, on behalf of themselves individually and on behalf of all other similarly situated owners of Pre-1972 recordings, which recordings were reproduced, performed, distributed or

1 otherwise exploited by CBS via the Music Service in California. The proposed Class  
2 is comprised of and defined as follows:

3 All owners of sound recordings of musical performances that initially  
4 were “fixed” (*i.e.*, recorded) prior to February 15, 1972, which sound  
5 recordings were reproduced, performed, distributed and/or otherwise  
6 exploited by CBS *via* any form or method of delivery or storage (*e.g.*,  
7 terrestrial broadcast, Internet, computer, server, etc.) in California (the  
8 “Class”).

9 — 36. This action may be properly brought and maintained as a class action  
10 because there is a well-defined community of interest in the litigation and the members  
11 of the proposed Class are clearly and easily ascertainable and identifiable.

12 37. The Class for whose benefit this action is brought is so numerous and  
13 geographically dispersed that joinder of all members of the Class is impracticable.  
14 Plaintiffs are informed and believe that there are hundreds or thousands of members of  
15 the Class whose identity can be readily ascertained from third party, music industry  
16 sources and from CBS’s database files and records. Therefore, the Class can be  
17 readily located and notified of this action.

18 38. Plaintiffs’ claims are typical of the claims of the members of the Class, and  
19 Plaintiffs’ interests are consistent with and not antagonistic to those of the Class they  
20 seek to represent. Plaintiffs and all members of the Class have sustained actual  
21 pecuniary loss and face irreparable harm arising out of CBS’s continued course of  
22 conduct as complained of herein.

23 39. Plaintiffs do not have any interests that are adverse to, or which conflict  
24 with, the interests of the absent members of the Class, and they are able to fairly and  
25 adequately represent and protect the interests of such Class. Plaintiffs have raised  
26 viable statutory, misappropriation, unfair business practices, and conversion claims of  
27 the type reasonably expected to be raised by members of the Class, and will vigorously  
28

1 pursue those claims. Plaintiffs are represented by experienced, qualified and  
 2 competent counsel, who are experienced in complex commercial litigation, class action  
 3 procedures, and the legal subject matter of this dispute. Plaintiffs and their counsel are  
 4 committed to prosecuting this action vigorously.

5 40. Common questions of fact or law exist as to all members of the Class that  
 6 predominate over any questions affecting only individual members of the Class. These  
 7 common legal or factual questions, include but are not limited to, the following:

8 (A) Whether CBS reproduced, performed, distributed or otherwise  
 9 exploited via the Music Service Pre-1972 Recordings in California;

10 (B) Whether CBS's reproduction, performance, distribution or other  
 11 exploitation via the Music Service of Pre-1972 Recordings in California  
 12 constitutes a violation of California Civil Code § 980(a)(2);

13 (C) Whether CBS's reproduction, performance, distribution or other  
 14 exploitation via the Music Service of Pre-1972 Recordings in California  
 15 constitutes an unfair business practice in violation of California Business &  
 16 Professions Code § 17200;

17 (D) Whether CBS's reproduction, performance, distribution or other  
 18 exploitation via the Music Service of Pre-1972 Recordings in California  
 19 constitutes misappropriation;

20 (E) Whether CBS's reproduction, performance, distribution or other  
 21 exploitation via the Music Service of Pre-1972 Recordings in California  
 22 constitutes conversion;

23 (F) The basis and method for determining and computing damages  
 24 and/or restitution and disgorgement;

25 (G) Whether, pursuant to California Civil Code § 3294, CBS is guilty  
 26 of oppression, fraud, or malice thereby entitling Plaintiffs and the members of  
 27 the Class to an award of punitive damages; and  
 28

1 (H) Whether CBS's conduct is continuing thereby entitling Plaintiffs  
2 and the members of the Class to injunctive or other relief.

3 41. A class action is superior to other available methods for the fair and  
4 efficient adjudication of this controversy since individual litigation of the claims of all  
5 class members is impracticable. Thus, for the vast majority of the members of the  
6 Class, the expense and burden of individual litigation would not justify pursuing the  
7 claims individually. Even if every member of the Class could afford to pursue  
8 individual litigation, the Court system could not. It would be unduly burdensome to  
9 the courts in which individual similar litigation of numerous cases would proceed.  
10 Individualized litigation would also present the potential for varying, inconsistent, or  
11 contradictory judgments and would magnify the delay and expense to all parties and to  
12 the court system resulting from multiple trials of the same factual issues. By contrast,  
13 the maintenance of this action as a class action presents few, if any, management  
14 difficulties, conserves the resources of the parties and of the court system, and protects  
15 the rights of each member of the Class. Plaintiffs do not anticipate any difficulty in the  
16 management of this action as a class action.

17 **FIRST CLAIM FOR RELIEF**

18 **(For Violation of California Civil Code § 980(a)(2) Against All Named Defendants**  
19 **and Does 1 through 10)**

20 42. Plaintiffs hereby incorporate the allegations set forth above in paragraphs 1  
21 through 41 above, as though fully set forth herein.

22 43. Pursuant to California Civil Code § 980(a)(2), Plaintiffs and the members  
23 of the Class possess exclusive ownership interests in and to the Pre-1972 Recordings,  
24 including the artistic performances embodied in those recordings.

25 44. Through its unauthorized reproduction, performance, distribution, or other  
26 exploitation via the Music Service of Pre-1972 Recordings (including the Recordings)  
27  
28



1 in California, CBS has infringed the exclusive ownership interests in and to the Pre-  
2 1972 Recordings in violation of California Civil Code § 980(a)(2).

3 45. As a direct and proximate consequence of CBS's violation of California  
4 Civil Code § 980(a)(2), CBS has received and retained money and value that rightfully  
5 belongs to Plaintiffs and the members of the Class.

6 46. As a direct and proximate consequence of CBS's violation of California  
7 Civil Code § 980(a)(2), Plaintiffs and the Class have been damaged in an amount that  
8 is not as yet fully ascertained but which Plaintiffs will ascertain and present through  
9 competent evidence at trial, but which is no less than \$5 million.

10 47. CBS's conduct is causing, and unless enjoined and restrained by this Court  
11 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot  
12 fully be compensated or measured in money. Plaintiffs and each member of the Class  
13 do not have an adequate remedy at law. Plaintiffs and each member of the Class are  
14 entitled to temporary, preliminary and permanent injunctions, prohibiting further  
15 violation of the ownership interests of Plaintiffs and each member of the Class in the  
16 Pre-1972 Recordings.

## 17 **SECOND CLAIM FOR RELIEF**

18 **(For Misappropriation Against All Named Defendants and Does 1 Through 10)**

19 48. Plaintiffs hereby incorporate the allegations set forth above in paragraphs 1  
20 through 41 above, as though fully set forth herein.

21 49. Pursuant to California Civil Code § 980(a)(2) and California common law,  
22 Plaintiffs and the Class possess exclusive ownership interests in and to the Pre-1972  
23 Recordings, including the artistic performances embodied in those recordings.

24 50. Plaintiffs and their predecessors in interest invested substantial time and  
25 money in developing the Recordings.

26 51. Because CBS does not obtain licenses, it does not incur any of the costs  
27 that a licensee is otherwise obligated to pay in order to reproduce, perform, distribute  
28

1 or otherwise exploit via the Music Service Pre-1972 Recordings (including the  
2 Recordings).

3 52. CBS has misappropriated, and continues to misappropriate, for its own  
4 commercial benefit, the exclusive ownership interests in and to the Pre-1972  
5 Recordings reproducing, performing, distributing or otherwise exploiting via the Music  
6 Service Pre-1972 Recordings (including the Recordings).

7 53. As a direct and proximate consequence of CBS's misappropriation, CBS  
8 has received and retained money and value that rightfully belongs to Plaintiffs and the  
9 Class.

10 54. As a direct and proximate consequence of CBS's misappropriation,  
11 Plaintiffs and the Class have been damaged in an amount that is not as yet fully  
12 ascertained but which Plaintiffs will ascertain and present through competent evidence  
13 at trial.

14 55. Plaintiffs are informed and believe, and on that basis allege, that in  
15 engaging in the conduct described herein, CBS acted with oppression, fraud and/or  
16 malice. CBS's conduct has been despicable and undertaken in conscious disregard of  
17 the rights of Plaintiffs and the Class. Accordingly, Plaintiffs and the Class are entitled  
18 to an award of punitive damages against CBS in an amount sufficient to punish and  
19 make an example of it.

20 56. CBS's conduct is causing, and unless enjoined and restrained by this Court,  
21 will continue to cause, Plaintiffs and the Class great and irreparable injury that cannot  
22 fully be compensated or measured in money. Plaintiffs and the Class do not have an  
23 adequate remedy at law. Plaintiffs and the Class are entitled to temporary, preliminary  
24 and permanent injunctions, prohibiting further violation of the ownership interests of  
25 Plaintiffs and the Class in the Pre-1972 Recordings.

**THIRD CLAIM FOR RELIEF**

**(For Unfair Business Practices Against All Named Defendants and Does 1  
Through 10)**

57. Plaintiffs hereby incorporate the allegations set forth above in paragraphs 1 through 41 above, as though fully set forth herein.

58. Pursuant to California Civil Code § 980(a)(2) and California common law, Plaintiffs and the Class possess exclusive ownership interests in and to the Pre-1972 Recordings, including the artistic performances embodied in those recordings.

59. CBS's conduct in reproducing, performing, distributing, or other exploitation via the Music Service Pre-1972 Recordings (including the Recordings) constitutes a misappropriation of the property rights of the Plaintiffs and the Class in the Pre-1972 Recordings and a violation of California Civil Code § 980(a)(2).

60. By misappropriating the property rights of the Plaintiffs and each member of the Class in the Pre-1972 Recordings and by violating California Civil Code § 980(a)(2), CBS has engaged in unfair business practices in violation of California Business & Professions Code § 17200.

61. As a direct and proximate consequence of its violation of California Business & Professions Code § 17200, CBS has received and retained money and value that rightfully belongs to Plaintiffs and the Class.

62. As a direct and proximate result of CBS's conduct, Plaintiffs and each member of the Class are entitled to restitution and disgorgement under California Business & Professions Code § 17200 in an amount that is not as yet fully ascertained but which Plaintiffs will ascertain and present through competent evidence at trial.

63. Plaintiffs are informed and believe, and on that basis allege, that in engaging in the conduct described herein, CBS acted with oppression, fraud and/or malice. The conduct of CBS has been despicable and undertaken in conscious disregard of the rights of Plaintiffs and the Class. Accordingly, Plaintiffs and the Class

1 are entitled to an award of punitive damages against CBS in an amount sufficient to  
2 punish and make an example of it.

3 64. CBS's conduct is causing, and unless enjoined and restrained by this Court,  
4 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot  
5 fully be compensated or measured in money. Plaintiffs and the Class do not have an  
6 adequate remedy at law. Plaintiffs and the Class are entitled to temporary, preliminary  
7 and permanent injunctions, prohibiting further violation of the ownership interests of  
8 Plaintiffs and the Class in the Pre-1972 Recordings.

#### 9 **FOURTH CLAIM FOR RELIEF**

##### 10 **(For Conversion Against All Named Defendants and Does 1 Through 10)**

11 65. Plaintiffs hereby incorporate the allegations set forth above in paragraphs 1  
12 through 41 above, as though fully set forth herein.

13 66. Pursuant to California Civil Code § 980(a)(2) and California common law,  
14 Plaintiffs and the Class possess exclusive ownership interests in and to the Pre-1972  
15 Recordings, including the artistic performances embodied in those recordings.

16 67. By reproducing, performing, distributing or otherwise exploiting via the  
17 Music Service Pre-1972 Recordings (including the Recordings), CBS has converted  
18 for its own use Plaintiffs and the Class's property rights in the Pre-1972 Recordings  
19 and has dispossessed each of their of property rights.

20 68. As a direct and proximate consequence of its conversion, CBS has received  
21 and retained money and value that rightfully belongs to Plaintiffs and the Class.

22 69. As a direct and proximate consequence of CBS's conversion, Plaintiffs and  
23 the Class have been damaged in an amount that is not as yet fully ascertained but  
24 which Plaintiffs will ascertain and present through competent evidence at trial.

25 70. Plaintiffs are informed and believe, and on that basis allege, that in  
26 engaging in the conduct described herein, CBS acted with oppression, fraud and/or  
27 malice. CBS's conduct has been despicable and undertaken in conscious disregard of  
28

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Los Angeles, CA 90017

1 the rights of Plaintiffs and each member of the Class. Accordingly, Plaintiffs and the  
 2 Class are entitled to an award of punitive damages against CBS in an amount sufficient  
 3 to punish and make an example of it.

4 71. CBS's conduct is causing, and unless enjoined and restrained by this Court,  
 5 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot  
 6 fully be compensated or measured in money. Plaintiffs and the Class do not have an  
 7 adequate remedy at law. Plaintiffs and the Class are entitled to temporary, preliminary  
 8 and permanent injunctions, prohibiting further violation of the ownership interests of  
 9 Plaintiffs and the Class in the Pre-1972 Recordings.

#### 10 PRAYER

11 WHEREFORE, Plaintiffs, on behalf of themselves and all other members of the  
 12 Class, pray for Judgment against CBS and the Doe defendants, and each of them, as  
 13 follows:

14 A. Determining that this is a proper class action maintainable pursuant to Rule  
 15 23 of the Federal Rules Civil Procedure, and certifying Plaintiffs as Class  
 16 Representatives, and appointing Plaintiffs' counsel as Class Counsel.

17 B. On all claims other than the Third, compensatory damages in excess of \$5  
 18 million according to proof.

19 C. On the third claim, restitution and disgorgement of CBS's unlawful  
 20 proceeds and revenues, including CBS's gross profits, in excess of \$5 million.

21 D. On all claims other than the first, punitive and exemplary damages  
 22 according to proof at trial.

23 E. On all claims, a temporary, preliminary, and permanent injunction  
 24 enjoining and restraining CBS, and their respective agents, servants, directors, officers,  
 25 principals, employees, representatives, subsidiaries and affiliated companies,  
 26 successors, assigns, and those acting in concert with them or at their direction, from  
 27 infringing, misappropriating, or converting, directly or indirectly, in California the  
 28



1 exclusive ownership interests in and to the Pre-1972 Recordings, including the artistic  
2 performances embodied in those recordings, including without limitation by directly or  
3 indirectly copying, reproducing, downloading, distributing, communicating to the  
4 public, uploading, linking to, transmitting, publicly performing, or otherwise  
5 exploiting in any manner any of the Pre-1972 Recordings, via the Music Service or  
6 otherwise.

7 F. On all claims, pre- and post-judgment interest.

8 G. For such fees and costs (including reasonable attorneys' fees) incurred  
9 herein as permitted by law.

10 H. For such other and further relief as the Court deems just and proper.

11 DATED: October 29, 2015

McKOOL SMITH HENNIGAN, P.C.

12  
13 By: /s/ Robert E. Allen

14 Robert E. Allen

15 and

16 MILLER LAW LLC

17 Attorneys for Plaintiffs

18 ABS ENTERTAINMENT, INC., BARNABY  
19 RECORDS, INC., BRUNSWICK RECORD  
20 CORPORATION and MALACO, INC.  
21  
22  
23  
24  
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**DEMAND FOR JURY TRIAL**

Plaintiffs, ABS ENTERTAINMENT, INC., BARNABY RECORDS, INC.,  
BRUNSWICK RECORD CORPORATION and MALACO, INC., demand a trial by  
jury of the claims for relief so triable as alleged in this First Amended Complaint.

DATED: October 29, 2015

McKOOL SMITH HENNIGAN, P.C.

By: /s/ Robert E. Allen

Robert E. Allen

and

MILLER LAW LLC

Attorneys for Plaintiffs

ABS ENTERTAINMENT, INC., BARNABY  
RECORDS, INC., BRUNSWICK RECORD  
CORPORATION and MALACO, INC.

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## SCHEDULE A-1

**Schedule "A1"****Representative Sampling of ABS's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
Ace Cannon	Tuff
Ace Cannon	Blues (Stay Away From Me)
Ace Cannon	Cotton Fields
Ace Cannon	Searchin
Al Green	Want to Hold Your Hand
Al Green	One Woman
Al Green	You Say It
Al Green	Right Now, Right Now
Al Green	I Can't Get Next To You
Al Green	Driving Wheel
Al Green	Tired of Being Alone
Al Green	Let's Stay Together
Ann Peebles	Walk Away
Ann Peebles	Give Me Some Credit
Ann Peebles	Generation Gap Between Us
Ann Peebles	Part Time Love
Ann Peebles	I Pity The Fool
Bill Black Combo	Smokie, Part 2
Bill Black Combo	White Silver Sands
Bill Black Combo	Josephine
Bill Black Combo	Don't Be Cruel
Bill Black Combo	Blue Tango
Bill Black Combo	Hearts of Stone
Bill Black Combo	Ole Buttermilk Sky
Bill Black Combo	Movin
Bill Black Combo	Twist Her
Bill Black Combo	Do It - Rat Now
Bill Black Combo	Money Shine
Otis Clay	That's How It Is (When You're In Love)
Otis Clay	A Lasting Love
Otis Clay	She's About A Mover
O.V. Wright	You're Gonna Make Me Cry
O.V. Wright	Eight Men, Four Women
O.V. Wright	Heartaches, Heartaches
O.V. Wright	Oh Baby Mine
O.V. Wright	I'll Take Care of You
O.V. Wright	Ace of Spades

Schedule "A1"

Page 1 of 2

**Schedule "A1"**

**Representative Sampling of ABS's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
O.V. Wright	When You Took Your Love From Me
O.V. Wright	A Nickel and a Nail
Syl Johnson	Come On Sock It To Me
Syl Johnson	Different Strokes
Syl Johnson	Dresses Too Short
Syl Johnson	Is It Because I'm Black
Syl Johnson	Concrete Reservation
Syl Johnson	One Way Ticket to Nowhere
Syl Johnson	Get Ready
Wilie Mitchell	20-75
Wilie Mitchell	Percolatin
Wilie Mitchell	Buster Browne
Wilie Mitchell	Bad Eye
Wilie Mitchell	Slippin' and Slidin'
Wilie Mitchell	Soul Serenade
Wilie Mitchell	Prayer Meetin'
Wilie Mitchell	30-60-90
Wilie Mitchell	My Babe



## SCHEDULE A-2

## Schedule "A2"

**Representative Sampling of Plaintiff's Pre-1972  
Sound Recordings Infringed**

Artist	Title
Andy Williams	(In The Summertime) You Dont' Want My Love
Andy Williams	Are You Sincere?
Andy Williams	Butterfly
Andy Williams	Canadian Sunset
Andy Williams	I Like Your Kind of Love
Andy Williams	Lonely Street
Andy Williams	The Bilbao Song
Andy Williams	The Hawaiian Wedding Song (Ke Kali Nei Au)
Andy Williams	The Village of St. Bernadette
Archie Bleyer	Hermando's Hideaway (from Pajama Game)
Archie Bleyer	The Naughty Lady of Shady Lane
Bill Hayes	The Ballad of Davy Crockett
Crickets (w/o Buddy Holly)	It'S So Easy
Crickets (w/o Buddy Holly)	Oh Boy!
Crickets (w/o Buddy Holly)	Peggy Sue
Crickets (w/o Buddy Holly)	That'll Be The Day
Eddie Hodges	(Girls Girls Girls) Made To Love
Eddie Hodges	I'm Gonna Knock At Your Door
Jimmy Buffett	Captain America
Johnny Tillotson	I Can't Help It (If I'm Still In Love With You)
Johnny Tillotson	It Keeps Right On A-Hurtin'
Johnny Tillotson	Jimmy's Girl
Johnny Tillotson	Out Of My Mind
Johnny Tillotson	Poetry In Motion
Johnny Tillotson	Send Me The Pillow That You Dream On
Johnny Tillotson	You Can Never Stop Me Loving You
Julius LaRosa	Anywhere I Wander
Julius LaRosa	Domani (Tomorrow)
Julius LaRosa	Eh! Cumpari
Lenny Welch	Ebb Tide
Lenny Welch	Since I Fell For You
Link Wray & His Ray Men	Rumble
Marion Marlowe	The Man In The Raincoat
Ray Stevens	Everything Is Beautiful
Ray Stevens	Gitarzan
The Chordettes	Born To Be With You

**Schedule "A2"**

**Representative Sampling of Plaintiff's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
The Chordettes	Eddie My Love
The Chordettes	Just Between You And Me
The Chordettes	Lay Down Your Arms
The Chordettes	Lollipop
The Chordettes	Mr. Sandman
The Chordettes	Never On Sunday
The Chordettes	Zorro
The Everly Brothers	('Til) I Kissed You
The Everly Brothers	All I Have To Do Is Dream
The Everly Brothers	Bird Dog
The Everly Brothers	Bye Bye Love
The Everly Brothers	Devoted To You
The Everly Brothers	Let It Be Me
The Everly Brothers	Like Strangers
The Everly Brothers	Poor Jenny
The Everly Brothers	Problems
The Everly Brothers	Take A Message To Mary
The Everly Brothers	This Little Girl Of Mine
The Everly Brothers	Wake Up Little Susie
The Everly Brothers	When Will I Be Loved

## SCHEDULE A-3

**Schedule "A3"****Representative Sampling of Brunswick's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
Barbara Acklin	Am I The Same Girl
Barbara Acklin	I Did It
Barbara Acklin	Just Ain't No Love
Barbara Acklin	Love Makes A Woman
Barbara Acklin & Gene Chandler	From The Teacher To The Preacher
Bob McFadden & Dor	The Mummy
Gene Chandler	Nothing Can Stop Me
Gene Chandler	The Girl Don't Care
Jackie Wilson	(Your Love Keeps Lifting Me) Higher & Higher
Jackie Wilson	A Woman A Lover A Friend
Jackie Wilson	Alone At Last
Jackie Wilson	Baby Workout
Jackie Wilson	Doggin' Around
Jackie Wilson	I'll Be Satisfied
Jackie Wilson	I'm Comin' On Back To You
Jackie Wilson	Lonely Teardrops
Jackie Wilson	My Empty Arms
Jackie Wilson	Night
Jackie Wilson	Please Tell Me Why
Jackie Wilson	Reet Petite
Jackie Wilson	That's Why (I Love You So)
Jackie Wilson	To Be Loved
Jackie Wilson	We Have Love
Jackie Wilson	Whispers (Gettin' Louder)
Jackie Wilson	You Better Know It
Jackie Wilson & Count Basie	For Your Precious Love
The Artistics	Girl I Need You
The Artistics	I'm Gonna Miss You
The Chi-Lites	(For God's Sake) Give More Power To The People
The Chi-Lites	Are You My Woman (Tell Me So)
The Chi-Lites	Give It Away
The Chi-Lites	Have You Seen Her
The Chi-Lites	I Like Your Lovin' (Do You Like Mine)
The Chi-Lites	Oh Girl
The Chi-Lites	We Are Neighbors
The Lost Generation	The Sly, Slick & The Wicked
The Young-Holt Unlimited	Soulful Strut
The Young-Holt Unlimited	Wack Wack



**Schedule "A3"**

**Representative Sampling of Brunswick's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
Tyrone Davis	Can I Change My Mind
Tyrone Davis	I Had It All The Time
Tyrone Davis	I'll Be Right Here
Tyrone Davis	Is It Something That You've Got
Tyrone Davis	Turn Back The Hands Of Time
Tyrone Davis	You Keep Me Holding On
Willie Henderson	Funky Chicken

## SCHEDULE A-4

**Schedule "A4"**

**Representative Sampling of Malaco's Pre-1972  
Sound Recordings Infringed**

<b>Artist</b>	<b>Title</b>
<b>Malaco Records</b>	
King Floyd	Groove Me
King Floyd	Baby Let Me Kiss You
King Floyd	I Feel Like Dynamite
King Floyd	Woman Don't Go Astray
Mighty Sam	Mr. and Mrs. Untrue
<b>Apollo Records</b>	
Mahalia Jackson	In the Upper Room
Mahalia Jackson	Go Tell It On The Mountain
Mahalia Jackson	Silent Night
Mahalia Jackson	His Eye Is On The Sparrow
The Cellos	Rang Tang Ding Done
Eddie Bo	Hey Bo
The Delroys	Bermuda Shorts
<b>Savoy Records (Gospel)</b>	
The Davis Sisters	Twelve Gates To The City
The Ward Singers	Surely God Is Able
The Roberta Martin Singers	God Is Still On The Throne
Rev. James Cleveland	Peace Be Still
Rev. James Cleveland	I Stood On The Banks of the Jordan
Rev. James Cleveland	The Love Of God